

**Court of Appeals, State of Michigan**

**ORDER**

IN RE CODY ROBERT BARNARD MINOR

Docket No. 287005

LC No. 05-714700-NA

Stephen L. Borrello  
Presiding Judge

William B. Murphy

Michael J. Kelly  
Judges

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The Court orders that the April 28, 2009 opinion is hereby AMENDED. The opinion contained the following clerical error: The lower court number in the caption of the opinion, 05-715700-NA is corrected to 05-714700-NA.

In all other respects, the April 28, 2009 opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 07 2009

Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CODY ROBERT BARNARD,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CAROL JO BARNARD,

Respondent-Appellant.

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UNPUBLISHED

April 28, 2009

No. 287005

Oakland Circuit Court

Family Division

LC No. 05-715700-NA

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err when it found that MCL 712A.19b(3)(g) had been established by clear and convincing evidence. The minor child was brought into care because he was neglected and abused, respondent had a history of referrals to Children's Protective Services, and she was abusing cocaine. Almost 2½ years passed before respondent's rights were terminated. Although the court found in 2007 that the statutory ground had been established, it declined to terminate, finding that it was not in the child's best interests, and the court gave respondent additional time to work on her treatment plan. Respondent was required to provide random weekly drug screens, participate in individual therapy to address her emotional needs, maintain housing and employment, participate in a psychological evaluation, and complete parenting classes. At the time of the second termination trial in May 2008, respondent had not substantially complied with the terms. She had not been consistent with the weekly screens although her compliance was better toward the end than in the beginning of the proceedings. She had tested positive for opiates on one occasion since the previous termination trial as the result of taking a pill given to her by her aunt for a severe toothache. There were periods in which she did not attend AA/NA meetings, claiming that she needed a break. She had not been

involved in individual therapy for over a year, claiming that she could not afford it after petitioner could no longer fund it. She had been diagnosed as bipolar and did not dispute this diagnosis, yet there were periods in which she did not take the prescribed medication. She did have housing at the time of the termination trial but had been evicted from her previous residence five months earlier and had moved many times throughout the proceedings. She worked at a temporary agency and was fairly consistent with her work. At the time of the first termination trial, respondent was in school so that she could get a better job, but she discontinued it after the trial because of the expense of gas. Visitation with the minor child was generally appropriate, although there were some concerns raised about respondent's ability to deal with the minor child's significant needs, which included ADHD and possibly bipolar disorder.

The evidence was clear that respondent had been unable to provide proper care and custody for the minor child when she was on crack cocaine and living with an abusive individual. Throughout the proceedings, respondent was given every opportunity to show the trial court that she could provide proper care and custody in the foreseeable future. Permanency planning hearings were adjourned to provide her with more time, and she was given almost an additional year after the first termination trial to show the trial court that she could be consistent in her efforts. The trial court did not clearly err in finding no reasonable likelihood that respondent would be able to provide proper care and custody within a reasonable time given her lack of sustained progress during the proceedings.

The trial court also did not clearly err in its best-interests determination. Respondent initially argues that the case should be remanded because the trial court applied the old version of MCL 712A.19b(5) instead of the recently amended version, which became effective July 11, 2008.<sup>1</sup> While the trial court issued its decision regarding the child's best interests after July 11, the best-interests hearing in which the evidence on the issue was presented took place on June 30, 2008. Given these circumstances and respondent's complete failure to provide any argument or legal analysis with respect to why the new version is applicable despite the fact that testimony was taken on a date before the amendment became effective, we reject respondent's argument that the case should be remanded for reconsideration of the best-interests issue under the new version of the statute.

After 2½ years of the child being in care and respondent having many opportunities, respondent was unable to take care of her own special needs. She had not attended therapy for over a year before the best-interests hearing, even though she had made great progress while she attended and there was no dispute that it would be beneficial to her. She did not consistently take her medication, although the trial court had given her additional time after the first best-interests hearing to show that she could be consistent in her efforts and respondent acknowledged

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<sup>1</sup> Pursuant to 2008 PA 199, the Legislature amended MCL 712A.19b(5), which was made effective July 11, 2008. Trial courts must now find, in addition to satisfaction of a statutory ground for termination, "that termination of parental rights is in the child's best interests." Previously, the court was required to order termination if a statutory ground was established "unless the court [found] that termination of parental rights to the child [was] clearly not in the child's best interest." 2000 PA 232.

that she needed medication for her bipolar condition. The minor child needed therapy and structure in a safe home, and he needed consistency. The trial court did not err when it found that, despite the bond between respondent and the child, respondent could not consistently take care of her own needs, let alone the special needs of the child. We conclude that the trial court did not clearly err with respect to its best-interests determination. *Trejo, supra* at 356-357.

Affirmed.

/s/ Stephen L. Borrello

/s/ William B. Murphy

/s/ Michael J. Kelly